

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

**8:18CV241**

**MEMORANDUM  
AND ORDER**

This matter is before the court on Petitioner's Motion to Dismiss for Lack of Subject Matter Jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). ([Filing No. 36](#).) The court dismissed Petitioner's habeas petition with prejudice on June 12, 2019. (Filing Nos. [26](#) & [27](#).) Petitioner prosecuted an appeal to the Eighth Circuit Court of Appeals which denied a certificate of appealability and dismissed the appeal on October 4, 2019. (See [Filing No. 34](#).) The mandate issued on October 25, 2019. ([Filing No. 35](#).) This matter is closed, and no further action is required by the court. Accordingly,

IT IS ORDERED that: Petitioner's Motion to Dismiss ([filing no. 36](#)) is denied as moot.

Dated this 15th day of November, 2019.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge